REMARKS

In response to the non-final Official Action of August 16, 2005, slight clarifying amendment has been made to claims 1 and 15. For the reasons set forth below, applicant's attorney respectfully requests reconsideration of the rejection of claims 1-28 under 35 U.S.C. §103(a), in view of US patent 6,400,954, Khan et al (hereinafter Khan) further in view of US patent 6,125,278, Wieczorek et al (hereinafter Wieczorek). Khan is newly cited in this Official Action and Wieczorek was previously relied upon in the Official Communication of April 7, 2005.

Khan is directed to methods and systems for mode selection based on access network capacity where the term "mode" refers to various parameters which impact the information rate at which transmissions are performed including modulation type and forward error correction (see Khan, column 4, lines 50-54). Khan relates to adjusting transmission rates over the air interface based on loading of the access network in a radio communication system. As discussed therein, when the required access network capacity is unavailable, some ongoing calls may be reallocated to a lower amount of access network resources by changing their associated air interface transmission mode; e.g., by switching from a link adaption having a higher information rate to a transmission mode having a lower information rate (see column 4, line 63 through column 5, line 1). In this way, additional access network capacity can be freed for new calls to be established.

However, a reading of Khan shows that it is directed to a radio communication system which can dynamically adapt its access network as that network is determined as becoming fully loaded or exceeding some loading threshold for a particular base station (see column 4, lines 35-44). There is no teaching or suggestion in Khan of scheduling data communication to or from a mobile station in accordance with available capacity of a network at both the current location and future locations of the mobile station since Khan does not deal with nor suggest dealing with future locations of the mobile station. As an example given in Khan at column 4, line 63 through column 5, line 13, when the required access network capacity is not available, some ongoing calls may be reallocated to a lower amount of access network resources by changing their associated air interface transmission mode; for example, by switching from a link adaption having a higher information rate to a transmission mode having a lower information rate. In this way, additional access network capacity can be freed for new calls to be established. The amount of capacity release from the ongoing calls and thus allocated to new calls will depend, for example, upon relative priorities of

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the ongoing new calls. Figure 3 of Khan is a flow diagram illustrating its methodology of reducing the rate for a new call to fit in the available network resources, as well as freeing resources by reducing information rate of ongoing calls through what is termed "mode modification."

In summary, it is seen that Khan in no way discloses or suggests looking at the available capacity of a network at both the current location and future locations of the mobile station for which a communication has been established between the mobile station and the network.

In contradistinction, claim 1 specifically states that the scheduling of the data communication to or from the mobile station (for which a communication has been established between itself and the cellular telecommunication network) is in accordance with the available capacity of the network at both the current location and future locations of the mobile station. To emphasize and make clear the fact that the scheduling of the data communication to and from the mobile station is in accordance with available capacity of the network at both the current location and future locations, amendment has been made to claim 1 in the scheduling step to add the word "both" with reference to the current location and future locations. Support for this amendment is found in the original figures, including Figures 2 and 3, as well as the original specification at page 6, line 30 through page 7, line 32. Thus, it is the available capacity of the network at the current location, as well as at the future location which is used to perform the scheduling step.

In Khan, the only analysis performed is with regard to the capacity of the access network in response to a <u>new</u> connection to be established over an air interface between a base station and the location of the new connection. In Khan, it is the capacity of the access network that can be adjusted depending upon the relative priorities of the ongoing calls and the new call(s). There is absolutely no discussion in Khan concerning scheduling data communications to and from a mobile station for which a communication <u>has been established</u> based upon the available capacity of the network at both the current location where the communication has been established and future locations of the mobile station.

It is not seen how Wieczorek would be combined with Khan in the manner as suggested by the Examiner. Wieczorek relates to optimizing resource allocation based on subscriber transmission history. The subscriber unit includes a positioning system receiver for receiving present location information. The subscriber unit provides current location information and route information and/or predicted future location information. Wieczorek is only directed to a system

that allocates communication resources in anticipation of expected resource requirements for a subscriber unit at the predicted future location. It does not disclose or suggest a scheduling of the data communication to or from the mobile station in accordance with the available capacity of the network at both the current location and future locations of the mobile station in a manner such that the data communications to or from the mobile station at the current location of the mobile station is prioritized in the scheduling step when the available capacity at future locations is less than that at the current location and wherein the data communications to or from the mobile station at the current location of the mobile station is delayed in the scheduling step when the available capacity at future locations is higher than that at the current location. At best, the combination of Khan with Wieczorek would adjust the capacity of the access network depending upon the capacity of the current and future locations of the access network rather than of a mobile station moving from a current location to future locations.

It is also respectfully submitted that the Official Action confuses the prioritizing of the data communication to or from the mobile station at the current location when the available capacity at future locations is less than that at the current location and the delaying of the data communications to or from the mobile station at the current location of the mobile station when the available capacity at future locations is higher than that at the current location with the categorization of traffic into classes as described in Khan at column 5, line 63 through column 6, line 7, as well as at column 6, lines 34-49. In Khan, it is stated that each service class can be allocated a specific bandwidth on the access network that will provide for some maximum call blocking/delay result and thus in the example given at column 6, lines 34-49, the highest priority class (class 1) has some reserve bandwidth that only calls in this class may use and may also use any other unused portion of the access network resources while class 2 calls may be services using any of the available bandwidth except that reserved for class 1, etc. of the remaining classes. Such prioritizing of access network resources within existing network location is unrelated to the prioritizing or the delaying of data communications between a mobile station and the current location depending upon the available capacity at both the current location and future locations of that mobile station as required by claim 1.

Therefore, the combination of Khan and Wieczorek does not suggest prioritizing the data communication to or from the mobile station at the current location of the mobile station when the

available capacity at future locations is less than that at the current location and delaying the data communication to or from the mobile station at the current location of the mobile station when the available capacity at future locations is higher than that at the current location.
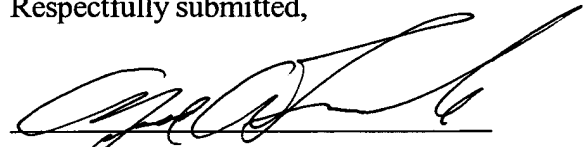
It is therefore respectfully submitted that claim 1 is not obvious in view of Khan, further in view of Wieczorek. Since claim 1 is believed to be distinguished over Khan and Wieczorek, it is respectfully submitted that claims 2-14, all of which are ultimately dependent on claim 1, are further distinguished over Khan in view of Wieczorek.

Independent telecommunication system claim 15 is similar to method claim 1 and has been slightly amended in a similar manner. For reasons as presented above with regard to claim 1, it is therefore respectfully submitted that claim 15 is distinguished over Khan in view of Wieczorek. Since claim 15 is distinguished over Khan in view of Wieczorek, it is also respectfully submitted that claims 16-28, all of which are ultimately dependent from system claim 15 are further distinguished over Khan in view of Wieczorek.

In view of the above arguments, it is respectfully submitted that the present application as amended is in condition for allowance and such action is earnestly solicited.

The undersigned respectfully submits that no fee is due for filing this Amendment. The Commissioner is hereby authorized to charge to deposit account 23-0442 any fee deficiency required to submit this paper.

Respectfully submitted,

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